

**REMARKS**

Claims 19 – 34 are currently pending in the application. Claims 1 – 18 have been canceled. The amendment to the current listing of claims does not constitute the introduction of new matter. Support for the additional element of the marking formed by at least two stamped lines that are separate from the fold lines is found on page 3, lines 2 – 4 of the specification. Support that the packaging and blank is produced from a web and the marking is read by a sensor to control the forming process is found on page 4, lines 21 – 27. Support that the fold lines form at least one boundary of a wall panel is found in Figures 2 and 3. Subject matter from claims 18 and 25 was removed and placed in dependent claims 23 and 29, respectively. Subject matter from claims 23 and 29 was also removed and placed in independent claims 18 and 25, respectively. Claims 24, 30, and 34 have been amended to eliminate alternative language. Claims 19 – 34 are rejected by the Examiner. Applicants respectfully traverse the Examiner’s rejections with the following remarks.

*Rejections of Claims under 35 USC § 102*

The Examiner rejects claims 19, 20, 22-26, 28-34 under 35 U.S.C. § 102(b) as being anticipated by Niske (USPN 4,746,058) and claims 19, 23-25, 29 and 30 as being anticipated by Johnson (USPN 3,956,872). The Examiner asserts that Niske and Johnson each disclose every element of Applicant’s invention. Applicant respectfully disagrees.

As currently amended Applicant claims a packaging, a blank for a packaging, and process of forming a packaging that incorporates a marking formed by at least two stamped lines that are

separate from the fold lines and is read by a sensor to control the forming process. Niske and Johnson fail to disclose these elements.

Niske concerns a container that has fold lines to incorporate a z-fold at the corners of the carton to provide rigidity to the final packaging. The container taught by Niske also teaches the removal of layers of material from certain areas of the packaging blank to improve the sealing process. The Examiner asserts that that the wall panels of Niske's carton bounded by fold lines 11, 14, 14', and 14" form a marking; however, as previously noted, the marking must be formed by at least two lines that are separate from the fold lines. All of the fold lines identified by the Examiner are fold lines used to shape the carton taught by Niske. None of the lines identified by the Examiner are separate from the fold lines. Because Niske does not teach a marking comprised of lines that are separate from the fold lines, Niske also fails to teach a process that includes the step of applying a marking by stamping lines that are separate from the fold lines.

Niske's carton also lacks the element of a marking that controls the packaging formation process. The fold lines of Niske's carton do not control the forming process, but are the result of the forming process. Applicant's invention is a marking that can be read by a sensor at various stages of the packaging formation process to control the final shape of the packaging. The marking can be read prior to feeding a web of material in order to relay reference information to the forming machine, it can be read during the forming process to ensure the correct angular position of the material web, or it can be read at the end of the process to ensure that the completed package is within the specifications reflected in the information carried by the marking. The fold lines identified by the Examiner do not control the formation process of a

package, but instead are a product of the formation process. In order to control a packaging formation process, reference values are required, which is true of any process. A machine that makes the fold lines for the package taught by Niske requires some input that dictates the placement of the fold lines in the starting material. The fold lines cannot be read before they are created and once created the position of the fold lines themselves cannot be used to determine if they were placed in the correct location.

The marking in Applicant's invention is capable of providing information about the angular position, dimensions, and volume of the final packaging which serve as a reference value for the finally constructed package. The fold lines identified by the Examiner do not control the formation process because they do not provide the reference values needed to determine if the final packaging is in the correct shape. Thus, the fold lines and the wall panels of Niske, relied upon by the Examiner, do not form a marking that controls the formation process.

Johnson teaches a packaging in which indicia, commonly a date, is applied to a carton by branding. The date indicia do not correlate to the dimensions of the carton, nor do they control the formation process. The Examiner asserts that the "marking" taught by Johnson correlates to dimensions of the packaging because the indicia are applied to a specific region of the packaging. Although it may be preferred to apply date indicia to a particular location on a wall panel, for example the tab on the top of a milk carton, the date indicia does not provide any information about the dimensions of the wall panel let alone the dimensions of the entire packaging as claimed by Applicant. For example, specifying on a filling machine that a date should be branded one-inch from the edge of the tab on the carton does not mean that one can

determine the volume or shape of the container from the branded date. The milk carton could be a large half-gallon container or a small pint container having a date indicia branded one inch from the edge of a tab on the milk carton, but in neither situation does the date indicia explain that one container holds a half-gallon or that the other holds one pint. The indicia are also applied at the end of the packaging formation process and nothing in Johnson discloses that the indicia are used to determine whether the carton was formed properly. Therefore, Johnson's indicia do not control the packaging formation process as claimed in Applicant's invention.

Thus, neither Niske, nor Johnson anticipates Applicant's invention. Reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) is respectfully requested.

*Rejections of Claims under 35 USC § 103*

The Examiner rejects claims 21 and 27 under 35 U.S.C. § 103(a) as being unpatentable over Niske (USPN 4,746,058). The Examiner admits that Niske does not disclose the angled markings to define a rhombus, but the Examiner asserts that a single pair of intersecting angled markings and markings that define a rhombus are equivalent for their use in the packaging art, and asserts that the selection of any equivalents to determine proper alignment of packaging material would be within the level of ordinary skill in the art. Applicant respectfully disagrees.

As currently amended, Applicant's invention as claimed is not obvious in view of Niske. Niske is concerned with improving the sealing process of a container by removing layers from the material from which the package is constructed. Niske is also concerned with improving the

rigidity of the packaging by adding a z-fold at the corners of the package. Comparing the content of Niske to the invention as claimed, there are several differences. There is no marking formed by stamped lines that are separate from the fold lines and there is no marking having a configuration that correlates to the dimensions of the packaging and controls the formation process.

The Examiner has failed to provide any motivation, either in Niske or that which is generally available to a person having ordinary skill in the art to suggest Applicant's invention is obvious. Examiner has also improperly limited Applicant's invention to a marking that only ensures proper alignment of the material web. Applicant has invented a packaging that incorporates a single marking, separate from the fold lines, that is able to not only prevent misalignment of the web, but also provides critical reference information concerning the shape and volume of the package to control the overall formation process by ensuring that the fold lines are applied and that the package is constructed properly. There is no discussion, let alone a suggestion, in Niske as to how to address the problem of controlling the packaging formation process by a marking when the material web is misaligned or warped during a filling process. The fold lines on the packaging taught by Niske cannot be used to control the formation process because they are a result of the formation process.

Thus, Applicant's invention is not unpatentable in view of Niske. Reconsideration and withdrawal of the rejection under 35 U.S.C. § 103 is respectfully requested.

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicant submits that the claims presented herewith are patentable over the prior art of record and in condition for allowance. Applicant respectfully solicits prompt action thereon. If any questions remain, the Examiner is invited to phone the undersigned attorney.

Respectfully submitted,

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